

CALIFORNIA BOARD OF ACCOUNTANCY

INITIAL STATEMENT OF REASONS

Hearing Date: January 27, 2012

Subject Matter of Proposed Regulations: Fingerprinting and Disclosure Requirements

Sections Affected:

1. Adopt Section 37.5 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would clarify which applicants, other than initial licensing applicants, must submit fingerprints. Applicants renewing in an inactive or retired status, or, actively serving in the U.S. military would be exempt from this requirement. Specifically, it requires, after June 30, 2014, the following licensees to submit fingerprints:

- (1) A licensee applying for renewal as a certified public accountant or public accountant who has not previously submitted fingerprints as a condition of licensure.
- (2) A licensee applying for renewal as a certified public accountant or public accountant for whom an electronic record of the licensee's fingerprints does not exist in the DOJ's criminal offender record identification database (CORI).
- (3) A licensee petitioning the Board for reinstatement of a revoked or surrendered license.
- (4) A licensee returning a license to an active status from an inactive or retired status or following active duty in the United States military.

Following being fingerprinted and a successful CORI search, this regulatory proposal would require licensees to retain either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ, or for those licensees who did not use an electronic fingerprinting system, a receipt evidencing that the licensee's or registrant's fingerprints were taken and submitted to the Board. An applicant for renewal would also be required to pay the actual costs of compliance.

The proposal would also require applicants for renewal to disclose the following on the renewal form:

- (1) whether the applicant has submitted fingerprints as required by this proposal;
- (2) whether the applicant has been convicted of any violation of law omitting traffic infractions under \$1,000 not involving alcohol, dangerous drugs or controlled substances; and,
- (3) whether the applicant has had a certificate or right to practice cancelled, revoked or suspended by any other state or foreign body.

Should an applicant for renewal fail to provide the information required by this proposal, the application will be rendered incomplete and the license will not be renewed until the

requirements are met.

Factual Basis/Rationale:

Business and Professions Code section 5000.1 states that the “protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” The purpose of the proposed regulatory changes is to ensure that the Board upholds its mandate to protect the public in accordance with section 5000.1. In order to protect the public from unethical and unprofessional practitioners, it is necessary for the Board to be informed of past and current criminal convictions that are substantially related to the qualifications, functions, or duties of their profession for which they are licensed. Business and Professions Code Section 5100 authorizes the board to revoke, suspend, or refuse to renew any permit or certificate for unprofessional conduct, including the conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or public accountant. In order to fully implement the Board’s authority to discipline a license that has been convicted of a crime substantially related to the qualifications, functions, or duties of their profession, the Board must receive all information related to those criminal convictions.

The Board has 68,901 licensees who were issued their license prior to January 1998, when the Board began requiring fingerprints at the time of license issuance. Since that time many of these licensees have ceased practice for one reason or another, but a substantial number of the Board’s licensees remain outside of the current fingerprinting process. The fingerprinting requirement ensures an accurate criminal history record check is performed in order to best protect the public which is the Board’s highest priority. This proposal will extend the fingerprinting requirement to those who are already licensed thus extending the protection of the public by ensuring that the Board receives timely notification of any arrests or convictions concerning all of its licensees from the DOJ in the future.

In addition, the disclosure of conviction and license or practice discipline will also further the protection of the public by providing the Board with an additional source of information from the licensee regarding conduct which may be substantially related to the practice of public accountancy.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):
Minutes of the September 22, 2011 CBA Meeting

Business Impact

This regulation will not have a significant adverse economic impact on businesses.

This initial determination is based on the following facts or evidence/documents/testimony:

Of the approximately 27,716 licensees who may be subject to this proposal, 25,509 of them are in-state. In-state licensees are fingerprinted via locally established California live-scan facilities and pay a one-time "rolling" administrative fee that varies by location from \$0 to \$40.00. Each location is permitted to establish its own fee structure but the overall average amount is \$25.00 and this amount is assumed in the calculation. Additionally, a one-time fee of \$51.00 is paid. Consequently a total one-time payment of \$76.00 is assumed per licensee.

California licensees whose address of record is out-of-state (the remaining 2,207 licensees) must submit two inked fingerprint card hardcopies paying a one-time \$51.00 fee. Other out-of-state state jurisdictions set their own administration fees and are comparable to those of California. Consequently, an average \$25.00 rolling fee will also be assumed in this calculation. Although live-scan is available in other states, it is not interconnected with California's system therefore licensees must submit inked hardcopies. Any additional postage/shipping fees to send the hardcopies to the CBA are the responsibility of the licensee. A total one-time payment of \$76.00 is assumed per licensee.

FY 2014-15 licensees still active that were licensed prior to 1998:

In-state: \$1,938,684 - (25,509 licensees x \$76.00)
Out-of-state: \$167,732 - (2,207 licensees x \$76.00)

Total: \$2,106,416

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The Board considered not instituting the fingerprint requirement for those already licensed. This was deemed to be unacceptable in light of the Board's highest priority of protecting the public.